

CRIMINAL REVISION APPLICATION NO.41/2003

Smt. Bharti Babulal Modi,
R/o.Harmalkarwada,
Tuem, Pernem, Goa.

.... Applicant.

V/s.

STATE
(Through the Public Prosecutor).

.... Respondent.

Mr. S.G. Bhobe, Advocate for the applicant.

Mr. S.N. Sardessai, Public Prosecutor for the State/
Respondent.

CORAM : P.V. HARDAS, J.

DATE : OCTOBER 16, 2003.

ORAL JUDGMENT :

The applicant/original accused is assailing the concurrent finding of facts recorded by the two Courts below in this revision. The applicant/accused was convicted by the learned Judicial Magistrate, First Class, Pernem by Judgment dated 22.7.1998 in Criminal Case No.52/S/94 for an offence punishable under Section 408 of the Indian Penal Code and was sentenced to undergo Simple Imprisonment for a period of six months and to pay a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for 15 days. On the appeal being carried to the appellate Court, the learned Ist Addl. Sessions Judge, Panaji, by Judgment dated 1.7.2003, rendered in Criminal Appeal No.39/98, dismissed the appeal filed by the applicant/accused and maintained the

conviction and sentence passed by the learned trial Court. It is this conviction and sentence passed by the learned J.M.F.C. and confirmed in appeal, which is assailed before me in this revision.

2. The facts, in brief, as are necessary for the decision of this revision, are set out hereunder :

PW.1 Pandurang Naik who is the Auditor of Co-operative Societies Dairy, Ponda, had filed a complaint at Exhibit PW.1/A alleging therein that the applicant/accused who was working as Secretary of Bhagwati Mahila Society Limited, Tuem for the period 1.10.1989 to 30.11.1990 had misappropriated an amount of Rs.11,024-08 by not showing the closing balance as on 30.11.1990 being Rs.11,024-08. The Audit Report, conducted by Pw.1 Pandurang Naik for the period 1.4.1990 to 31.3.1991, is at Exhibit PW.1/B. The prosecution in support of its case, had examined in all seven witnesses, which included PW.6 Yeshwant Parab and PW.7 Babu Gaonkar as the Investigating Officers.

3. Both the Courts below, on appreciation of the evidence, came to the conclusion that the prosecution had proved the offence beyond reasonable doubt and the conviction and sentence was proper.

4. Mr. S.G. Bhobe, the learned Counsel appearing on behalf of the applicant/accused has submitted that the applicant/accused has undergone an imprisonment of 10 days. This is evident from the R&P. of the Courts below. According to the learned Counsel for the applicant, the applicant/accused is a lady, aged about 45 years and is presently unemployed. She had been employed for some time even after the alleged misappropriation was detected. He has further submitted, relying on the Audit Report of the Auditors for the period 1999-2000, that the accused/applicant has refunded the amount of Rs.11,024-08. He has submitted that the alleged offence pertains to the year 1990-91. In such circumstances, it is urged before me that a lenient view of the sentence be taken and the applicant/accused be released on the period of imprisonment already undergone and, if necessary, by enhancing the fine which is imposed by the Courts below.

5. I have heard Mr. S.N. Sardesai, the learned Public Prosecutor, on behalf of the State, who has submitted that the prosecution has been able to establish the offence against the applicant/accused beyond reasonable doubt and according to him, no interference in the sentence is called for.

6. From the record and proceedings of the

Courts below, it is apparent that the applicant/accused was arrested on 16.4.1994 and was released on the same day. Thereafter, she was arrested on 14/8/2003, after pronouncement of the Judgment of the appellate Court. She was ordered to be released on bail by this Court by order dated 22.8.2003. Thus, the applicant/accused has undergone imprisonment for a period of 10 days. From the order sheet of the learned trial Court dated 15.9.98, it appears that the applicant/accused has paid the fine of Rs.2,000/- under Receipt No.107666 dated 15.9.98. The applicant/accused is a lady, who was aged 34 years when her plea was recorded on 18.11.1994. The applicant is, therefore, aged 43/44 years when this revision is taken up for hearing. A perusal of the Audit Report furnished by the learned Counsel for the applicant shows that the applicant/accused has deposited the amount of Rs.11,024-08. The applicant/accused is at present not in employment of the said Society and, according to the learned Counsel for the applicant she is presently unemployed. The learned trial Court, in paragraph 16 of his Judgment has held **"The accused might not be the only participant in the misappropriation."** In view of all these circumstances, I am of the considered opinion that the applicant/accused deserves to be released on the period of imprisonment already undergone by the applicant by enhancing the fine from Rs.2,000/- to Rs.4,000/-.

7. Accordingly, the Criminal Revision Application No.41/2003 is partly allowed. The conviction of the applicant/accused for an offence punishable under Section 408 of I.P.C. is confirmed and the sentence passed by the learned trial Court is altered to the period of imprisonment already undergone by the applicant/accused, by enhancing the fine from Rs.2,000/- to Rs.4,000/-. The applicant/accused shall pay the balance amount of fine of Rs.2,000/- within three months from today. The sentence in default of payment of the fine is maintained.

P.V. HARDAS, J.

ssm.